

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
 . Detroit, Michigan
 . July 21, 2014
Debtor. . 10:00 a.m.

FURTHER HEARING RE. (#5155) MOTION FOR TEMPORARY
ALLOWANCE OF CLAIM OF THE MACOMB INTERCEPTOR DRAIN
DRAINAGE DISTRICT PURSUANT TO RULE 3018(a) OF THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE FOR PURPOSES OF ACCEPTING
OR REJECTING THE DEBTOR'S FOURTH AMENDED PLAN OF
ADJUSTMENT; (#5354) MOTION FOR CLASS CERTIFICATION
OF PROOF OF CLAIMS #2638, 2651, 2654, 2659, 2676,
2683, 2689 AND 2692 FILED BY CREDITOR HYDE PARK
CO-OPERATIVE, ET AL.; (#5259) FIFTH AMENDED ORDER
ESTABLISHING PROCEDURES, DEADLINES AND HEARING
DATES RELATING TO THE DEBTOR'S PLAN OF ADJUSTMENT
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Jones Day
By: HEATHER LENNOX
222 East 41st Street
New York, NY 10017
(212) 326-3837

Miller, Canfield, Paddock & Stone, PLC
By: TIMOTHY FUSCO
STEPHEN S. LAPLANTE
150 West Jefferson Avenue, Suite 2500
Detroit, MI 48226
(313) 963-6420

For Hyde Park Co- Thornbladh Legal Group, PLLC
Operative, et al.: By: KURT THORNBLADH
7301 Schaefer
Dearborn, MI 48126
(313) 943-2678

Becker & Wasvary, PLLC
By: CARL BECKER
2401 W. Big Beaver Road, Suite 100
Troy, MI 48084
(248) 649-5667

APPEARANCES (continued:)

For David Sole:	Jerome D. Goldberg, PLLC By: JEROME GOLDBERG 2921 East Jefferson, Suite 205 Detroit, MI 48207 (313) 393-6001
For County of Macomb, Michigan:	Dechert, LLP By: ALLAN S. BRILLIANT 1095 Avenue of the Americas New York, NY 10036 (212) 698-3600
For Syncora Holdings, Ltd., Syncora Guarantee Inc., and Syncora Capital Assurance, Inc.:	Kirkland & Ellis, LLP By: RYAN BENNETT 300 North LaSalle Chicago, IL 60654 (312) 862-2074
For U.S. Bank:	Waller Lansden Dortch & Davis, LLP By: DAVID LEMKE Nashville City Center 511 Union Street, Suite 2700 Nashville, TN 37219 (615) 244-6380
For City of Detroit Water and Sewerage Dept.:	Kilpatrick & Associates By: RICHARDO KILPATRICK 903 N. Opdyke Road, Suite C Auburn Hills, MI 48326 (248) 377-0700
For Adversary Proceeding Plaintiffs Maurikia Lyda, et al.:	Edwards & Jennings, PC By: ALICE JENNINGS Cadillac Tower Building 65 Cadillac Square, Suite 2710 Detroit, MI 48226 (313) 961-5000
For ACLU:	ACLU Fund of Michigan By: KARY MOSS 2966 Woodward Avenue Detroit, MI 48201 (313) 578-6183
For the Official Committee of Retirees:	Dentons US, LLP By: CAROLE NEVILLE 1221 Avenue of the Americas, 25th Floor New York, NY 10020-1089 (212) 768-6700

APPEARANCES (continued):

For Faith Unitarian Universalist Service Committee
Institutions: By: DR. PATRICIA JONES
 689 Massachusetts Ave.
 Cambridge, MA 02139
 (617) 868-6600

Detroit Water and Sewerage Department
Mr. Darryl Latimer, Deputy Director and
Chief Customer Service Officer

Court Recorder: Kristel Trionfi
 United States Bankruptcy Court
 211 West Fort Street, 21st Floor
 Detroit, MI 48226-3211
 (313) 234-0068

Transcribed By: Lois Garrett
 1290 West Barnes Road
 Leslie, MI 49251
 (517) 676-5092

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1 THE CLERK: Case Number 13-53846, City of Detroit,
2 Michigan.

3 THE COURT: Good morning. I'd like to begin this
4 morning with the motion for class certification, please. I
5 don't think that will actually take very long, and then we
6 can move to our status conference. Are counsel here on that?

7 MR. FUSCO: Good morning, your Honor. Timothy
8 Fusco, Miller Canfield, for the City of Detroit.

9 MR. THORNBLADH: Your Honor, Kurt Thornbladh on
10 behalf of Hyde Park and the similarly situated claimants. We
11 have no objection to going last.

12 THE COURT: You have no objection what?

13 MR. THORNBLADH: We have no objection to waiting
14 until the status conference is held.

15 THE COURT: Oh, no. I want to proceed with this,
16 but I have to say, counsel, let me address both of you at the
17 lectern, please. As I read your papers, it looked to me like
18 there was an agreement that the issue of whether the class
19 should be certified and the extent of any relief to be
20 granted to the plaintiffs, whether as a class or not, should
21 be heard and determined by the state court. Is that right,
22 or am I missing something?

23 MR. THORNBLADH: That is no longer the position of
24 the claimants. The claimants sent a letter to Jones Day
25 dated November 11, 2013, with a proposed stipulation to send

1 this issue back to state court. We've been waiting on Jones
2 Day, the plaintiff's -- I'm sorry -- the debtor's attorney,
3 all this time. We think with the passage of time it would be
4 more expeditious and more helpful to the overall case of the
5 City of Detroit if it stayed in this court.

6 MR. FUSCO: Your Honor, it has been and continues to
7 be the position of the city that this is best resolved in
8 state court. The narrow matter before us today is
9 certification under Rule 9014 and 7023 of the class, but we
10 still have then the issue of liquidation. Now, your Honor
11 has previously ruled in the context of a class action seeking
12 injunctive relief against regulatory action that the best
13 forum is a state court. Mr. Thornbladh --

14 THE COURT: This has been up and down in the
15 appellate process.

16 MR. FUSCO: It's been to the Supreme Court and back,
17 and --

18 THE COURT: So, Mr. Thornbladh, why isn't it best
19 just to remand this to -- not remand it but abstain and allow
20 the state court to continue with the litigation given its
21 experience with the case?

22 MR. THORNBLADH: Well, we think because the Court
23 would like to move the overall City of Detroit Chapter 9
24 along expeditiously, and --

25 THE COURT: Well, but this is just a claim. I mean

1 there's no necessity to resolve a claim to move the case
2 along, is there?

3 MR. THORNBLADH: I would think it would be in this
4 case, your Honor --

5 THE COURT: Okay. Why?

6 MR. THORNBLADH: -- because we have to determine
7 what the amount of the damages under the damage portion of
8 the complaint are in time to get a good claim in and get
9 payments on the claim.

10 THE COURT: Why is there any reason to believe this
11 Court would do it quicker than the state court?

12 MR. THORNBLADH: May I ask my co-counsel if he can
13 address -- he's more experienced in that court -- why he
14 believes --

15 THE COURT: Okay. You may.

16 MR. THORNBLADH: -- this Court could do it more
17 quickly?

18 MR. FUSCO: And, your Honor, just for the record, we
19 did send prior to this a proposed stipulation weeks ago to
20 Mr. Thornbladh and Mr. Becker offering to lift the stay and
21 send all of these matters back to the state court, and in the
22 objection -- the resolution of the objection to the class
23 claims, we agreed that certification by the state court
24 would -- this claim would then be treated as a class claim so
25 that you're not giving up anything by proceeding in the state

1 court. I know some courts have ruled that a prior
2 certification in state court may not be binding, but we've
3 agreed it will be.

4 MR. BECKER: Your Honor, Carl Becker on behalf of
5 the plaintiff.

6 THE COURT: Thank you, sir.

7 MR. BECKER: This particular matter, as the Court
8 noted, went from the Court of Appeals to the Supreme Court
9 and back down again. In the interim, the judge that
10 originally made the decision in the case retired, and so no
11 one in the state court --

12 THE COURT: So have I.

13 MR. BECKER: You're right.

14 THE COURT: Can't you tell?

15 MR. BECKER: We believe that we can move this matter
16 along. It's been literally sitting in the system well before
17 the bankruptcy got filed. It just sat in the state court and
18 wasn't moving along. We tried to make this matter move along
19 by talking -- by sending a proposal to opposing counsel many,
20 many, many months ago, and they just simply ignored
21 everything that we did. And here we are today, and at the
22 11th -- 11:59 they decide at the last second --

23 THE COURT: One second.

24 MR. BECKER: -- that they want to do something.

25 THE COURT: One second, please. Okay. I'm sorry to

1 impose this upon you, but we need to take a pause here.
2 We're having apparently technical difficulties with the audio
3 in the overflow room, so let me ask you to just stand down
4 briefly while we address this issue. Are we good now, sir?

5 UNIDENTIFIED SPEAKER: Yes.

6 THE COURT: Oh, okay. All right. Let's resume
7 then.

8 MR. BECKER: In any event, so we go back to
9 November, and we were trying as best as we could to try and
10 see what we could do to move this along. We then get
11 contacted by the city attorney, Mr. Mike Muller, who's been
12 handling this matter, who starts to discuss with us
13 settlement, and we start to put together documents for a
14 settlement. Now they want to move it back down again, and it
15 seems to me that we should be given an opportunity to see if
16 this matter was settleable because that's what's been
17 happening for the last two months. We've been compiling
18 information to provide to the city to reach a settlement, and
19 it's hard to tell what's going on here because Mr. Muller
20 indicates that he accepts a Headlee Amendment variation on
21 our -- on an amended complaint, let's get the class settled,
22 and then all of a sudden we get these motions from Jones Day,
23 and it's like totally inconsistent. And maybe perhaps --

24 THE COURT: Wait a minute. Did Jones Day --

25 MR. BECKER: -- with everybody here --

1 THE COURT: Did Jones Day file a motion on this?

2 MR. BECKER: Well, I'm sorry. The motion that was
3 filed in this case --

4 MR. THORNBLADH: It was an objection to --

5 MR. BECKER: -- objection to the claim. I'm sorry.

6 THE COURT: Okay.

7 MR. BECKER: I'm sorry, your Honor. And so to say
8 we're getting pulled from one end and then getting pulled
9 from another -- and I think that maybe perhaps the best
10 approach to take on this matter is if it could stay here long
11 enough to see if everybody can get together and get a
12 resolution to this matter. I don't even understand how two
13 different attorneys say two different things, one objecting
14 to the claim and the other one saying we're fine, let's try
15 to solve it.

16 MR. FUSCO: They're not inconsistent, your Honor.
17 The stipulation said the city --

18 THE COURT: Yeah. In this Court we litigate and
19 mediate at the same time.

20 MR. BECKER: Okay.

21 THE COURT: It's what we do.

22 MR. BECKER: Well, in any event, that -- we believe
23 that --

24 MR. THORNBLADH: If I may, your Honor, I'd like
25 to --

1 THE COURT: By the microphone, please.

2 MR. THORNBLADH: If I may, your Honor, that
3 statement is why you should keep the case because the
4 pressure to mediate this in the state court based on the
5 experience of all the attorneys that have handled it in the
6 state court, very slow-going. It's got its own problems like
7 the City of Detroit does. If we can keep it here at least
8 for awhile longer, we could probably get this resolved and
9 move on.

10 MR. FUSCO: Your Honor, again, you dealt with this
11 in another matter I handled, LaSalle, where you issued an
12 opinion and said that claims of this type are not suited to
13 the ADR and the mediation process set up principally because
14 they're seeking injunctive relief on a regulatory matter on a
15 prospective basis, which cannot be dealt with in mediation
16 and because it deals with the regulatory scheme of the city.

17 Now, what the plaintiffs, I think, most want is a
18 determination of reasonableness and an injunction, which we
19 can only deal with in the state court. The Sixth Circuit has
20 said it's within your discretion to determine whether under
21 Rule 9014 you're going to apply 7023 and reach a decision,
22 and one of the factors that you consider, the complexity of
23 the matter and the delay and the effect on the underlying
24 bankruptcy case. Well, as we all know, there are a whole
25 bunch of things pending right now that are of great

1 importance in this case. And the best way to deal with this
2 is simply under 9014 decline to apply 7023, and then we
3 will -- even though no motion was filed -- and I want to add
4 that. I mean if the complaint was nobody responded to the
5 letter -- and I don't know anything about that -- we within
6 two weeks of getting this motion agreed to lift the stay and
7 to send everything back to state court. No stay relief
8 motion has ever been filed. In Mr. Thornbladh's objection to
9 the Jones Day claim objection, he said since this case
10 involves a constitutional issue, the Court should remand the
11 matter to state court for a determination for the amount of
12 liability. Now, he said that in reply to our motion and his
13 motion itself this should go back to state court, and I think
14 that's not only consistent with your prior rulings, it just
15 makes sense because all we have today is a narrow piece of
16 this. The liquidation process is best done in state court
17 that can give complete relief to the plaintiffs. I've talked
18 to the city attorneys. There are three matters pending right
19 now before the Circuit Court, a motion to file a second
20 amended complaint, a motion for class certification, and a
21 motion for a status conference. Now, one minute after we
22 lift the stay, go forward with that, and that, I think, is
23 the best way to move this case forward. And we're doing
24 halfway relief because you still have what won't be resolved
25 here is the prospective rates to be charged to these people.

1 THE COURT: All right. Anything further either --

2 MR. BECKER: I just wanted to point out to the Court
3 when counsel suggests that this is a complex issue, it is not
4 a complex issue. It is facially unreasonable, as we pointed
5 out in our brief --

6 THE COURT: Well, now is not the time to argue the
7 merits of it, but how do you deal with the argument that says
8 that even if I keep it, that doesn't get you the prospective
9 relief you need?

10 MR. BECKER: That's an issue that we have to -- I
11 agree with counsel on that.

12 THE COURT: All right. In the circumstances, I
13 agree with the city that the best way to get this matter
14 resolved as efficiently and expeditiously as possible is to
15 lift the stay, abstain, and allow the state court to proceed.
16 The city has agreed to an order which binds them in this case
17 on whatever decision the state court makes regarding class
18 certification. Yes?

19 MR. FUSCO: We have, your Honor.

20 THE COURT: And so let me ask you to agree upon the
21 terms of an order at least in form and submit it to the
22 Court.

23 MR. THORNBLADH: Thank you, your Honor.

24 MR. BECKER: Thank you, your Honor.

25 MR. FUSCO: When you say "abstain," just to be

1 clear, your Honor, abstaining from the case or are you --

2 THE COURT: Abstaining from deciding the proof of
3 claim until the state court resolves it, and then that will
4 be the proof of claim. That'll be the allowed amount of the
5 claim.

6 MR. FUSCO: All right. Thank you.

7 MR. THORNBLADH: Thank you, your Honor.

8 THE COURT: All right. So let's turn our attention
9 to the status conference, please. I have an agenda of eight
10 items, and I'd like to tell you what they are and ask if
11 anyone objects to any of these or has any additional items.
12 Okay. First, I want to give a resolution to the Macomb
13 County district request for a claim estimation, and then I
14 want to inquire whether there is any disclosure the city is
15 prepared to make at this point today regarding the creditors'
16 vote on the plan. I want to have the further up conversation
17 with Mr. Latimer regarding water shutoffs. I want to make
18 sure that the distribution of Ms. Kopacz's report of last
19 Friday has been fully accomplished. And then I want to have
20 a further conversation regarding the ASF interest rate
21 disclosure, and I suppose with that we can also talk about
22 how to handle the issue that was raised regarding the
23 Department of Transportation legal protections and then a
24 conversation about whether the trial can be shortened in
25 light of the settlements that have come in and in that

1 context also Syncora's motion to adjourn, and in that context
2 I suppose we'll also discuss when and if the city plans to
3 file a new plan, and then finally a closed courtroom
4 conversation regarding the site visit. So is that okay with
5 everyone? Okay. So let's begin with the Macomb County
6 district estimation. Are the attorneys here on that?

7 MR. GOLDBERG: Your Honor, if I could address one
8 item with the --

9 THE COURT: Yes. Would you stand at the microphone,
10 please, sir?

11 MR. GOLDBERG: Jerome Goldberg appearing, your
12 Honor. With regard to the item dealing --

13 THE COURT: Who do you represent, sir?

14 MR. GOLDBERG: I'm sorry.

15 THE COURT: Who do you represent here?

16 MR. GOLDBERG: I represent David Sole, interested
17 party. In this case, though, I'm here with several attorneys
18 who, just with regard to the item with Mr. Latimer, we did
19 want to inform the Court that attorneys have filed an
20 adversary proceeding on behalf of victims of water shutoffs,
21 and if we could just perhaps address that in the context of
22 the discussion with Mr. Latimer.

23 THE COURT: Okay.

24 MR. GOLDBERG: Thank you.

25 MR. BRILLIANT: Your Honor, this is Allan Brilliant

1 on behalf of Macomb County. I'm on the phone, and I believe
2 Ms. Badalamenti should be in the courtroom.

3 MR. LEMKE: Your Honor, David Lemke with Waller
4 Lansden on behalf of U.S. Bank, the trustee for the water and
5 sewer bonds. I was hoping I might be able to ask your Honor
6 to add an item to your agenda.

7 THE COURT: Okay.

8 MR. LEMKE: There is a -- we would like your
9 Honor -- to ask your Honor to revisit the issue of the
10 responses that the city has received to the RFI's on the
11 privatization. Back on May 12th you ruled that they would
12 not be produced because the process was ongoing, and there
13 were some proprietary information. We think the process has
14 potentially progressed far enough now that the same issues
15 the city articulated back on May 12th may no longer exist.

16 THE COURT: Okay. We'll add that perhaps in the
17 context of the motion to adjourn and the length of the trial.

18 MR. LEMKE: Very good. Thank you.

19 MR. LAPLANTE: Good morning, your Honor. Stephen
20 LaPlante of Miller Canfield appearing on behalf of the city.

21 THE COURT: Okay. So on the Macomb County district
22 estimation, keeping in mind that the purpose of the
23 estimation is to determine whether and to what extent the
24 county and the district should be permitted to vote on the
25 plan, the Court concludes that the record establishes a

1 sufficient likelihood of success on the merits of the claim
2 that for voting purposes it should be allowed in the
3 requested amount of \$26 million, so the Court will enter an
4 order that for voting purposes the district's claim is
5 allowed for that purpose. It must be understood by all
6 concerned that this estimation will carry absolutely no
7 weight whatsoever in actually fixing the amount of the claim,
8 which will be done at a later date. Okay. So anything
9 further on that, counsel?

10 MR. BRILLIANT: Your Honor, this is Allan Brilliant.
11 Thank you, your Honor. Do you want us to submit a proposed
12 order, or will your Honor be doing that by minute order?

13 THE COURT: I'll take care of it. I'll take care of
14 it actually in a written order.

15 MR. BRILLIANT: Thank you, your Honor.

16 MR. LAPLANTE: Nothing further, your Honor.

17 THE COURT: Okay. So let's move on then in our
18 agenda and ask the city if there's anything it wishes or
19 proposes to disclose regarding the creditors' vote on the
20 plan at this time.

21 MS. LENNOX: Good morning, your Honor. Heather
22 Lennox of Jones Day on behalf of the city. Given the fact
23 that not all of the tallies for all of the classes are
24 completely nailed down as of this morning, it probably would
25 be imprudent for us to say anything, but obviously we do

1 intend to file the declaration today, and we will.

2 THE COURT: Okay. Thank you. Okay. Is Mr. Latimer
3 here? You're not Mr. Latimer.

4 MR. KILPATRICK: No, I'm not, your Honor. I'm
5 Richardo Kilpatrick, and I'm here on behalf of the Detroit
6 Water and Sewage Department. I'm actually their counsel in
7 the Chapter 9 case, and I simply wanted to indicate that I do
8 have Mr. Latimer here, and he's here to -- pursuant to the
9 Court's request, to explain the additional customer outreach
10 that the department is going to engage in prospectively to
11 address your concerns.

12 MR. LATIMER: Good morning. In response to your
13 Honor's directives, the Detroit Water and Sewage Department
14 has reassessed its current collections campaign. Let me
15 begin my comments by saying that the department is committed
16 to be proactive and as aggressive in our efforts to
17 communicate with our customers. Today we are refocusing,
18 reassessing our efforts in that regard. Today we are
19 beginning a citywide aggressive communication and engagement
20 campaign to help our customers who are in need of assistance.
21 We will detail some of our plan of action in a few minutes.

22 I also want to announce to the Court that DWSD is
23 instituting a 15-day pause on residential shutoffs effective
24 immediately. We are not changing our course in our efforts
25 to run the department more efficiently, but we need time to

1 make sure that our aggressive communication efforts can reach
2 our customers and that those who have financial difficulties
3 can learn how they can get the help they need to keep their
4 water on.

5 DWSD's goals are simple. We want to ensure that
6 everyone has access to water; that they are -- that they are
7 current and/or are on their way to getting current on any
8 overdue owed amounts. In recent years, the department has
9 experienced a significant increase in the number of accounts
10 60 days or more past due. Declining collection rates,
11 increasing bad debt, population loss, abandoned properties,
12 declining employment, median annual household income decline
13 to approximately 15 percent of the national average are among
14 the contributing factors to the delinquencies. These
15 factors, when taken in context with the department's
16 historical lack of rigor in the collections process, has
17 resulted in 83-percent collections in rates -- collection
18 rate and approximately \$50 million in bad debt in annual
19 retail water and sewage billings.

20 The impact of these circumstances are clear.
21 Detroiters who pay their bills are compensating for those who
22 don't through higher rates. For the rates effective July
23 1st, 2014, approximately ten percent of the increase was due
24 to bad debt, billing uncollected from those who are receiving
25 services. Placing this burden on the shoulders of those who

1 do pay will result in affordability challenges for a larger
2 population of Detroit customers. While Detroit has
3 historically made collection efforts, including shutoffs, we
4 have not been at the level necessary to adequately address
5 the outstanding delinquencies on an ongoing basis. Notifying
6 customers they might be shut off without performing a shutoff
7 has contributed to the growing number of our customers paying
8 in arrears, if at all.

9 Beginning in the summer of 2013, the department
10 began increasing the number of shutoffs for accounts that
11 were noticed as delinquent and in shutoff status. For our
12 customers who came to us with affordability issues, we worked
13 to keep their service on and also finding assistance and
14 referrals and payment plans.

15 While there has been a significant amount of media
16 and other communications on this issue, on occasion it has
17 been brought to our attention that we have a customer either
18 out of service or on the path to shutoff who is not aware of
19 what we have in terms of program practices that can assist
20 them in keeping their service active, and they have an
21 affordability issue. We have invited those that have
22 expressed compassion for our customers in these circumstances
23 to bring their customers forward so that we can assist them.
24 A very small handful of those have been brought forward;
25 however, the impression remains that there may be a

1 significant number of customers who cannot afford water
2 service and have had service disconnected. DWSD does not
3 want to put our customers out of service. We want and need
4 our customers to contact us to pay bill, make arrangements to
5 catch up on arrearage, and/or identify the need and apply for
6 assistance. This will allow us best service our community
7 and our customers in stabilizing our rates. Our goals are to
8 eliminate shutoffs and restore water to residential customers
9 with qualifying documented affordability issues, to increase
10 customer awareness of affordable payment assistance options
11 for residential customers, expand and enhance outreach
12 through partnerships with grass root organizations.

13 Our vision. DWSD employees, customers, and other
14 stakeholders will work together to inform customers with
15 affordability issues of the need to come forward to avoid
16 shutoffs, to have service restored. As I stated, we will
17 suspend shutoffs for 15 days. We will continue to focus
18 public attention on the issue through the media,
19 communications, organizations, communication with customers
20 and other means partnering with clergy, interested groups to
21 help DWSD get payment and financial assistance information to
22 our customers, responding promptly to restore service for
23 qualified customers, suspending those shutoffs for qualified
24 customers while assistance is sought, and measure and report
25 results.

1 By 7-18-14, 2014, preparing fliers, the payment
2 assistance options available for DWSD customers with contact
3 information, widely distributing that in conjunction with
4 other efforts.

5 7-21, establish a grass root mechanism with clergy,
6 the Department of Neighborhood and other groups to distribute
7 fliers, inform these constituents and identify unique
8 customer circumstances for DWSD to follow up, partnering with
9 THAW to reach out to DWSD customers in shutoff status that
10 THAW has qualified for bill assistance with other utility
11 providers. Due to confidentiality provisions, THAW would
12 mail or otherwise contact DWSD customers at those addresses.

13 On 8-4, 2014, compare local -- locations of shutoffs
14 not returned to service with database of abandoned structure,
15 identify Detroit blight taskforce efforts to assist in
16 clarifying accounts' status for properties.

17 On 7-18, 2014, initiate the second round of bill
18 inserts calling attention to the affordability program
19 availability to DWSD residential customers. All households
20 will receive inserts over a four-week period.

21 On 8-2, 2014, host a water affordability fair at the
22 Eastside Service Center from 8 a.m. to 5 a.m. -- p.m. to
23 assist customers with bill payment assistant arrangements.
24 In addition to these specific actions over the next 15 days,
25 DWSD will focus on the following: increased communication

1 efforts on the affordability program for those that need
2 assistance with water bills as follows. Continue effort to
3 utilize media, DWSD's web page, bill massaging, social media,
4 et cetera, to disseminate information. Distribute
5 information on bill payment assistant, payment plans, budget
6 plans, et cetera, and the application process for these
7 programs in partnership with the following groups: the City
8 of Detroit Department of Neighborhood district managers,
9 senior centers, clergy, customer advocacy groups. Also,
10 we're going to continue with nonresidential account
11 collections at accounts previously shut off. Through the
12 methods described and the actions above, we will identify
13 addresses where residential properties are occupied and are
14 out of service. For any customer legally occupying a
15 property who identifies an affordability issue with their
16 water bill, we will hold their shutoff in abey while we work
17 through qualifications for assistance, establish a payment
18 plan, or other near-term solutions to keeping them in
19 service. Pursue -- we will continue to pursue illegal turn-
20 ons, place all identified unoccupied properties in inactive
21 status.

22 This is just an overview of DWSD -- what DWSD has in
23 store for the next month. Communications with customers will
24 take center stage in coming weeks as -- in the coming weeks
25 as we help to get customers current in their billing and keep

1 their water service on. DWSD is committed to providing the
2 best service it can to all its customers, and we look forward
3 to doing just that. Thank you.

4 MR. KILPATRICK: Your Honor, it is our sincere hope
5 that this addresses all of the concerns that the Court voiced
6 last week. Do you have any questions for us?

7 THE COURT: No. No questions. Let me just take
8 this opportunity to thank you. Obviously you, Mr. Latimer,
9 and your staff and your department put a lot of thought and
10 effort into this presentation and into the plan that it
11 represents, and so I want to express my thanks and
12 appreciation to you for that. It is not this Court's role or
13 function certainly at this point in time to rule on or even
14 further address the adequacy of this. I can only say that it
15 does address the concerns that I raised last week. Anyone
16 else want to be heard regarding this?

17 MS. JENNINGS: Yes, your Honor. Good morning, your
18 Honor. I am Alice Jennings. I am appearing today. We just
19 this morning filed a claim before this Court, a class action
20 for the citizens for residential water usage and sewage
21 usage.

22 THE COURT: Ma'am, I want to interrupt to be --

23 MS. JENNINGS: Yes.

24 THE COURT: -- sure you understand today is not a
25 status conference on that adversary proceeding nor really for

1 any proceedings relating to that adversary proceeding. I
2 appreciate your letting me know that it was filed --

3 MS. JENNINGS: Yes.

4 THE COURT: -- although I did see it.

5 MS. JENNINGS: Okay. Very well.

6 THE COURT: And I read it.

7 MS. JENNINGS: And, your Honor, if I may, I would
8 like to just address the Court for a moment about -- and I
9 understand and appreciate what Mr. Latimer said, but there
10 are dozens of citizens, in fact hundreds across the City of
11 Detroit today who have had their water shut off. There are
12 two families that I know of --

13 THE COURT: Okay.

14 MS. JENNINGS: -- with children --

15 THE COURT: Okay. But there's nothing for me to do
16 about that today.

17 MS. JENNINGS: Okay. Well, your Honor, I'm sure
18 that we will follow the procedure established, and we will
19 open up discussions with Mr. Latimer insofar as we can. Is
20 there --

21 THE COURT: That's a really good idea. One second.
22 Mr. Kilpatrick, I would encourage you on behalf of the
23 department to work with Ms. Jennings and -- did I get your
24 name correctly --

25 MS. JENNINGS: Alice Jennings, your Honor.

1 THE COURT: -- Jennings and the other attorneys and
2 groups that are interested in this on a continuing and
3 ongoing basis to solve this problem. This is a solvable
4 problem, as I said last time, and I think that with the
5 creativity of everyone involved, it can be solved.

6 MS. JENNINGS: Yes. And we're not looking for
7 litigation. We're looking for solutions, your Honor.

8 THE COURT: Absolutely.

9 MS. JENNINGS: Thank you.

10 THE COURT: We've got people without water, and they
11 need their water.

12 MS. JENNINGS: Yes.

13 MS. MOSS: Judge, I'm Kary Moss. I'm the director
14 of the ACLU of Michigan, and I just wanted to bring to your
15 attention that we also filed this morning with you a letter
16 that we wrote in partnership with the NAACP Legal Defense
17 Fund. Particularly we're concerned not just simply about how
18 the department is communicating with Detroit residents but
19 with actually the processes that they have in place and the
20 adequacy of the system, so we also look forward to these
21 conversations.

22 THE COURT: Thank you. Thank you, ma'am.

23 MS. MOSS: Would you like a copy of this?

24 THE COURT: I actually saw it already.

25 MS. MOSS: Okay. Thank you.

1 THE COURT: Yes.

2 MR. GOLDBERG: Your Honor, if I just may add very
3 briefly, I just want to say to the Court that I give a lot of
4 credit to the Court for at least bringing this process based
5 on a grass roots objector, Ms. Hamel, bringing this in front
6 of the Court, and that it's -- and that it put at least a
7 temporary stop to this process and allows for time to get
8 this done. It's unfortunate this wasn't done before, but I
9 do think the Court deserves a lot of credit, and that's
10 what -- and we've been meeting with representatives and will
11 follow the procedures of this Court to --

12 THE COURT: Oh, you have been. Good.

13 MR. GOLDBERG: -- ensure the negotiation but want to
14 thank the Court for its intervention.

15 DR. JONES: Your Honor, my name is Dr. Patricia
16 Jones, and we've also filed last night a permissive petition
17 for intervention on behalf of faith institutions.

18 THE COURT: I saw that, and I saw the motion for an
19 expedited hearing, and I will be addressing that very
20 shortly.

21 DR. JONES: Thank you, sir.

22 THE COURT: Tell me who you're on behalf of again.

23 DR. JONES: Unitarian Universalist Service
24 Committee, Michigan Welfare Rights Organization. There are
25 several petitioners.

1 THE COURT: Yeah.

2 MR. THORNBLADH: Your Honor, Dr. Jones has great
3 credentials, and I helped them put this motion together,
4 so --

5 THE COURT: I saw that.

6 MR. THORNBLADH -- I thought I would address it in
7 case you had a question.

8 THE COURT: Yeah. I will address the motion for an
9 expedited hearing very shortly. Ms. Jennings, Mr. Goldberg,
10 Mr. Thornbladh, and Mr. Kilpatrick, let me see you at the
11 side of the bench for a moment, please.

12 MR. THORNBLADH: Certainly.

13 (Conference at side bar)

14 MR. KILPATRICK: Thank you, your Honor.

15 MR. THORNBLADH: Thank you, your Honor.

16 THE COURT: You're welcome. You're welcome. Okay.
17 I want to turn attention now to my feasibility expert's
18 report and just to get a statement on the record if it's
19 appropriate that everyone who was entitled to it got it.

20 MS. LENNOX: It was served on Friday night, your
21 Honor.

22 THE COURT: Okay. And who was it served on in a
23 sort of general way?

24 MS. LENNOX: I believe it was -- well, we utilized
25 KCC, so they served through normal channels, e-mail channels.

1 Unless the Court restricted --

2 THE COURT: Okay. Perhaps it would be appropriate
3 to ask them to file a declaration of service.

4 MS. LENNOX: Certainly, your Honor. We can do that.

5 THE COURT: And then that'll take care of that.

6 MS. LENNOX: We'll do that.

7 THE COURT: Okay. While you're still there, let's
8 talk about the ASF interest rate disclosure, and I did read
9 what Ms. Neville filed regarding that.

10 MS. LENNOX: Um-hmm. So I'll add just a little bit
11 to that because I thought that was a very helpful piece, your
12 Honor. First, I want to make clear that this is only
13 applicable to those who have previously taken ASF
14 distributions in lump sum, and that's not everyone. When
15 someone takes an ASF distribution, they're offered the choice
16 of taking it in lump sum or receiving an amount as an
17 annuity, so the participants who have taken ASF are already
18 familiar with the concept of annuitization, and we have
19 confirmed with the General Retirement System that the
20 interest factor that they used when annuitizing that is the
21 7.9-percent interest factor that the GRS uses, so, in fact,
22 the plan is using a lower interest factor.

23 In fact, to remind participants, we disclosed that
24 they had this option at the top of page 24 of the amended
25 disclosure statement, which says, and I quote, "Upon

1 retirement, an employee may elect to receive a lump sum
2 distribution, or to annuitize some or all of his ASF account
3 balance, which is added to his or her monthly pension payment
4 and is separately identified on a retiree's pension check.
5 Any portion of the ASF balance that is not annuitized upon
6 retirement is paid to the retiree in a partial or total lump
7 sum distribution at the retiree's request." So when a person
8 retires and receives a distribution from ASF, they are made
9 aware of the annuitization option and the interest rate that
10 goes along with it. So throughout the plan of adjustment and
11 the disclosure statement as well as in the plain language
12 notice that accompanied the original ballots, we used the
13 language -- the same language in all places when we discussed
14 the annuitization of the recoupment, and we said, quote,
15 "That amount will then be converted into monthly annuity
16 amounts based on your life expectancy and other factors."
17 That language appears at page 34 in the plan, page 25 of the
18 disclosure statement, and pages 18 to 19 of the plain
19 language statement.

20 THE COURT: I've been asked to ask you to speak
21 louder.

22 MS. LENNOX: Oh, sure. In the plain language
23 statement, again, we also gave an example, number one, that
24 explained how this would work, so there was an example
25 provided as well. In addition, when we had the issue

1 where -- that caused us to provide replacement ballots, there
2 was a stipulation that was filed by the Retiree Committee and
3 the city on June 4th, and specifically on page 9 of that
4 stipulation the 6.75 interest rate was disclosed in a
5 publicly filed document. It was also included to the
6 retirees who received the replacement ballots on page 2 of
7 the letter. It was clearly disclosed there.

8 In addition, on June 5th, the General Retirement
9 Systems made a presentation available to all persons who
10 could attend the session, and in that presentation, which I
11 have a copy of if your Honor wants to see it, they did talk
12 about the 6.75-percent interest rate for the annuitization.
13 That presentation was immediately placed on their website,
14 and it remains there today.

15 In addition, on each person's specific ballot we
16 disclosed to them the total amount of the recoupment and the
17 monthly amount that would be deducted from the check, so
18 persons were not left to wonder how this would affect their
19 check going forward.

20 So we believe that we have given sufficient
21 disclosure of this, particularly with the way the ASF worked
22 in the past with annuitization and an interest rate
23 component, so between that -- the disclosures that I've
24 identified and the additional disclosures that the Retiree
25 Committee made that Ms. Neville identified, I believe that we

1 have sufficient disclosure of this item.

2 THE COURT: Ms. Neville, is there anything you would
3 like to add?

4 MS. NEVILLE: Yes, your Honor. Carole Neville on
5 behalf of the Retiree Committee. We filed a report last
6 night to respond to your Honor's inquiry about this matter.
7 I agree with everything that Ms. Lennox said about
8 disclosure, but that stipulation was only filed on the docket
9 and only served on a comparatively small group of people. In
10 addition, not everybody attended the retiree town halls, so
11 although it was disclosed and we made every effort to
12 disclose it as soon as we discovered the 6.75-percent
13 interest rate, it was never disclosed in any official
14 document that the retirees received. And, in fact, even if
15 you looked at the monthly annuity on each ballot, people
16 would assume, as many did, that once they had finished paying
17 the amount, their time -- their pension deductions would be
18 over. So, your Honor, I don't have a solution for the
19 problem, but I don't think that there was disclosure of the
20 6.75 percent, adequate disclosure of it, at any point until
21 just recently when the retirees obviously know about it since
22 many have filed objections to it.

23 THE COURT: Well, the issue of adequate disclosure
24 of the interest rate is a different issue from whether there
25 was adequate disclosure of how long people would be required

1 to pay. You can't mix those up; right?

2 MS. NEVILLE: No, your Honor, you cannot, but both
3 issues are connected, although it does say in the description
4 of the annuity that it's based on your lifetime expectancy.
5 Now, I don't know how much a retiree would understand about
6 that, but the 6.75 percent increases the amount of the
7 payment dramatically.

8 THE COURT: But that increase -- that increased
9 amount is disclosed?

10 MS. NEVILLE: No, it is not. What is --

11 THE COURT: I thought each individual retiree was
12 told how much their monthly recoupment amount would be.

13 MS. NEVILLE: What the ballot does is it has your
14 current pension, the total ASF reduction, and then a monthly
15 amount. And if you divide the monthly amount into the
16 assumption to the total amount, you would get ten years, say,
17 but your actuarial life might be twenty-five years, and you
18 have no way of knowing what the interest component of the
19 monthly annuity amount is.

20 THE COURT: Right, but that monthly amount that's
21 disclosed includes interest. In other words, interest isn't
22 added to that.

23 MS. NEVILLE: No, no. It does include interest,
24 yes.

25 THE COURT: What's not disclosed is how much of that

1 amount is interest and how --

2 MS. NEVILLE: Correct.

3 THE COURT: -- much of it is --

4 MS. NEVILLE: That's correct.

5 THE COURT: -- the base --

6 MS. NEVILLE: That's correct.

7 THE COURT: -- the base obligation.

8 MS. NEVILLE: That's correct. So when people
9 voted -- and the letter that did go out that does explain it
10 went out to the population whose ballots were affected by
11 taking off the 2000 to 2003 period and not to the larger
12 population and not to the people who don't have ASF
13 recoupment who might have considered that in their vote as
14 well.

15 THE COURT: But you're not requesting any relief as
16 a result of this at this point in time?

17 MS. NEVILLE: No, your Honor, we're not. I would
18 like to continue to speak to Ms. Lennox about how to deal
19 with this. Your Honor has a number of individual objections
20 that were filed after the date that your Honor picked the
21 individuals to --

22 THE COURT: Right.

23 MS. NEVILLE: And I'm not sure what you intend to do
24 with those new objections that were filed, which focus much
25 more on issues that came up later in the solicitation

1 procedure, so I think we can continue to try and figure out a
2 solution to this problem.

3 THE COURT: Well, all right. It's nothing to rule
4 on today. The only thing I can say is that if you seek
5 relief based on your position that there was an inadequate
6 disclosure, you can file a motion, and, likewise, the city
7 can file a motion to obtain a court ruling that the
8 disclosure was adequate under the Bankruptcy Code, and then
9 we'll deal with it --

10 MS. NEVILLE: I realize that, your Honor.

11 THE COURT: -- legally in due course.

12 MS. NEVILLE: Yes.

13 THE COURT: All right.

14 MS. NEVILLE: Thank you.

15 THE COURT: Regarding the Department of
16 Transportation protections, I didn't really intend to have a
17 further discussion with you about it before our confirmation
18 hearing. I just suggested that I thought that was something
19 that should be addressed at the confirmation hearing --

20 MS. LENNOX: That's what I understood, your Honor.

21 THE COURT: -- probably by means of legal briefs.

22 MS. NEVILLE: Your Honor, that is another objection.
23 It's not a committee objection, but that is an objection that
24 has been raised by a number of retirees, individual retirees.

25 THE COURT: Right, yes. So I thought the city

1 should address it since it was -- didn't appear in any of its
2 responses to anything that was filed.

3 MS. LENNOX: Thank you, your Honor. That's how we
4 understood your directive, and we do intend to brief that for
5 your Honor.

6 THE COURT: Yeah. Okay. All right. So let's talk
7 about Syncora's motion to adjourn and the length of the trial
8 in a conversation here. The reason why I want to bring up
9 the issue of the length of the trial is because in my last
10 order I think I did say that if parties settled in the
11 meantime, that might be cause to reduce the hours that each
12 side was allotted for the trial, and in the meantime the
13 LTGO's, who appear to have been allocated approximately 13
14 hours, and the DPOA, who had shared with the DFFA four hours,
15 have settled, and, of course, if we reduce time on the
16 creditors' side on that account, whatever time we do decide
17 to reduce, we should also reduce the city's time
18 correspondingly, so I invite any thoughts on this question
19 from people who are here.

20 MS. LENNOX: Thank you, your Honor. I think, first
21 of all, DPOA has partially settled. Remember, we do have to
22 reach a collective bargaining agreement with them by the end
23 of the month. If not, their objections spring back into
24 life. So I think we should put that --

25 THE COURT: Yes. Thank you for reminding me of

1 that.

2 MS. LENNOX: -- we should put that one in abeyance
3 for now. I am -- given the fact that my litigation partners
4 have been handling the details of hours for trial, I am not
5 as familiar with that as I would perhaps like to be at this
6 particular moment, but the LTGO's were largely represented by
7 Ambac as an insurer. Ambac is also an insurer in the DWSD
8 group of insurers, so I am unfamiliar if the time was
9 allotted to Ambac or to the LTGO issues. If they were
10 allotted to the LTGO issues, I do think we would need a
11 little bit of time to present 9019 information with respect
12 to the settlement, but obviously I don't think that would
13 take 13 hours, your Honor.

14 MR. BENNETT: Good morning, Judge. Ryan Bennett on
15 behalf of Syncora. From Syncora's perspective, Judge, the
16 amount of time that we need as to the trial hasn't changed.
17 You know, in terms of shortening it, you know, discovery is
18 ongoing right now, and discovery will, you know, dictate from
19 our vantage how much time we actually need and if we --

20 THE COURT: Yeah. I wasn't proposing reducing your
21 time.

22 MR. BENNETT: Right. I just wanted to make that
23 point clear. In terms of, you know, we may actually
24 require -- you know, depending on where the LTGO settlement
25 settles and what the details are, we're going to have to

1 address that in the context of our presentation, and that's,
2 quite frankly, one of the subjects of our motion, which we
3 didn't notice up for today, but we certainly want a dialogue
4 with your Honor about it. You know, that's, for example, as
5 we talked about last week, a scenario where another --

6 THE COURT: Well, you know, both of you raise an
7 interesting point. We don't really need a resolution of the
8 issue of the length of the trial today. We can just say it's
9 out there, and it's something that has to be addressed
10 probably sooner than later but not necessarily today.

11 MR. BENNETT: I think that's right, your Honor.

12 THE COURT: Let me ask, Ms. Lennox, are you prepared
13 to deal with Syncora's motion to adjourn today, or would you
14 prefer another date for that?

15 MS. LENNOX: I can deal with that today if that's
16 what your Honor wishes.

17 THE COURT: All right. Are you prepared, sir?

18 MR. BENNETT: I am, sir, yeah. So, as I noted, at
19 the last pretrial conference we had a conversation with your
20 Honor about some concerns we had with respect to the
21 incomplete nature of the plan and some of the detail that
22 underlied what we understand from the various media reports,
23 you know, are settlements that the city has reached or -- for
24 example, that's with the LTGO and then with respect to the
25 stuff that's in the plan, the fact that it's all qualified by

1 definitive documentation that we've yet to see, that relates
2 to the UTGO, which we have a pending objection on its
3 legality, as well as the DIA grand bargain, which is the
4 cornerstone of the entire plan. We've yet to receive these
5 documents. We were told at the last pretrial conference
6 there was going to be an amended plan filed on Friday. There
7 was a stipulation, I think, filed with the Retiree Committee
8 last week.

9 THE COURT: Well, hang on. What Ms. Lennox said was
10 that she hoped to file one by Friday.

11 MR. BENNETT: Understood, your Honor. And I think
12 the stipulation filed last --

13 THE COURT: Wasn't a commitment and certainly wasn't
14 an order.

15 MR. BENNETT: Yeah. Agree. And then we saw
16 something in the stipulation with the Retiree Committee last
17 week that said that a plan would be perhaps hopefully
18 forthcoming on Saturday. That wasn't -- -- that didn't
19 happen either. And in any case, you know, our motion is
20 really focused on the fact that, you know, under 1128(b), as
21 a party in interest, we've got a right to object to the plan,
22 and -- but right now we don't know what that plan is still.
23 It's very similar to when you and I sat here and talked about
24 the disclosure statement. We were talking about inadequate
25 versus incomplete. You know, here we've got an incomplete

1 plan that we're entitled to object to as a party in interest,
2 and until that plan is complete, we cannot adequately put
3 together our objection and put together the prep for that
4 objection. I'll give you an example. Tomorrow Steve Hackney
5 is going to be interviewing -- or deposing Mr. Orr. We'd
6 like to focus some of that deposition on what went into the
7 LTGO settlement, the specific terms of that settlement, how
8 it was reached, what the city considered in the context of
9 whatever trades and terms are part of that agreement, but we
10 can't do that because we don't have that agreement. We don't
11 know the terms. We know some economics, but we don't know if
12 it includes specific provisions, for example, maybe a most
13 favored nations clause that says that if the COPs get a
14 certain treatment above the LTGO's, the LTGO's rise with it.
15 Well, we'd like to know that kind of information. We don't
16 right now, yet the trial schedule still goes forward, and so
17 we believe that an adjournment would be appropriate so the
18 city could finally catch up, file a complete document, and
19 then the trial schedule could map on, and we could all
20 proceed efficiently. All right. Thank you.

21 THE COURT: Thank you, sir.

22 MS. LENNOX: Thank you, your Honor. I suppose I'll
23 use this also to give your Honor an update on where we are
24 with the plan filing, some of which we put in our papers that
25 we filed last night. What Mr. Bennett seems to be really

1 focused on is the UTGO and the LTGO settlements. I don't
2 think he disputes -- I don't think he disputes that a term
3 sheet for the UTGO settlement was attached to the plan, and a
4 very detailed term sheet for the DIA settlement was attached
5 to the plan.

6 We have finally last week reached agreement on the
7 final terms of the actual settlement documentation for
8 UTGO's, so we expect to file that when we file the plan this
9 week, and we will file the plan this week. We are working
10 on, as I indicated on LTGO, some last-minute mechanical
11 issues, and they have to be worked out among the parties.
12 The parties are in dialogue about that, and I fully expect
13 them to be worked out this week, so that would be included in
14 the plan as well. Given the fact that Syncora understands
15 the actual terms of the DIA settlement and the UTGO
16 settlement because they were in the plan that's been filed
17 for two months and they understand the economics of the LTGO
18 settlement because it was in the expert reports, and, in
19 fact, Mr. Hackney confirmed them in an e-mail to me last
20 week, which we've attached to our papers, I fail to see how
21 Syncora says that they're prejudiced enough to warrant a six-
22 week delay of the confirmation hearing. So certainly if
23 plans are filed and if details occur that people weren't
24 expecting, I'm confident we're going to hear objections about
25 it, but they can't claim objections for not knowing the

1 material terms of the deals because those have been
2 disclosed. So I think, your Honor -- and we laid most of
3 this out in our papers, so I'm not going to belabor it, but
4 we don't think that there's any prejudice to Syncora. We
5 don't think there's any reason for delay, and, in fact, if
6 there is a delay, particularly one of this length, that would
7 prejudice not only the city and its residents but the other
8 creditors who are participants in this case as well.

9 THE COURT: Thank you. Mr. Bennett, anything
10 further?

11 MR. BENNETT: I have nothing further, your Honor.

12 THE COURT: All right. I'm going to take this under
13 advisement and issue an order on it in the next day or so.

14 MR. BENNETT: Thank you, sir.

15 MR. LEMKE: Your Honor, David Lemke again on behalf
16 of the trustee for the water and sewer bonds. I appreciate
17 you allowing me to add something to the agenda. What we're
18 asking about here is for your Honor to reconsider a prior
19 ruling that you made with respect to the responses that the
20 city has received to the RFI's on the public-private
21 partnership on the water-sewer system.

22 THE COURT: Let me ask you to pause here and ask if
23 you gave the city any notice of your intent to raise this
24 here today.

25 MR. LEMKE: We did, your Honor. My partner, Paul

1 Davidson, had conversations last week with some of Ms.
2 Lennox's partners, and I have an e-mail here exchange. To my
3 knowledge, the city is not willing to produce them at this
4 point, but, yes, we did try to get this resolved, so --

5 THE COURT: Okay.

6 MR. LEMKE: So, your Honor, just to kind of refresh
7 everybody's memory on this, one of the reasons we had asked
8 for these responses is we do believe that they will be very
9 telling and insightful for both our consulting expert, who
10 may be a testifying expert on the water and sewer system,
11 particularly as it relates to the city's projections --
12 financial projections for the water-sewer systems, and --

13 THE COURT: Why is that?

14 MR. LEMKE: Well, because these system -- or I'm
15 sorry -- these parties that responded to the RFI will have
16 taken into account and they will have identified potential
17 places for revenue enhancements, for cost savings, for
18 capital expenditure needs, and that will have been baked in,
19 if you will, to their response to the RFI. And so that
20 information will be very helpful to basically test the
21 adequacy of the city's projections with respect to those
22 exact same items and will be beneficial certainly to our
23 expert, who tells us that this would be one of the more
24 valuable pieces of information he could look at or some of
25 the more valuable information he could look at, and it may be

1 equally as valuable then to the Court to the extent it
2 becomes relevant and is admissible as part of his overall
3 expert testimony, so that is the reason we need it. It will
4 have this additional information that should shed important
5 light on the underlying issues regarding, in essence, the
6 feasibility of that aspect of the city's plan with respect to
7 the DWSD.

8 THE COURT: All right. Ms. Lennox, are you prepared
9 to deal with this today?

10 MS. LENNOX: Yes, your Honor, I think I can. We
11 still object to producing these documents. As your Honor
12 indicated when we had this colloquy in May, that trying to
13 produce documents which aren't done in the middle of a
14 process can only -- to the creditors can only chill the
15 process. This process probably hasn't moved as fast as
16 anybody would have thought it would have given the fact that
17 there is an interrelationship between this and what is
18 currently being discussed in the DWSD mediation, and
19 obviously I can't get into the specifics of that here, but
20 suffice it to say that this process is not yet completed. We
21 did inform counsel for the trustee that this process was not
22 yet completed, and, therefore, we didn't think it advisable
23 to produce anything related to something that is still up in
24 the air.

25 As to the reason that the trustee has given that his

1 expert wants to see it, I don't think this will hinder their
2 expert from providing a report because remember what they're
3 opining on is the plan in front of your Honor today. What it
4 sounds like they want here is what some other party thinks
5 that cost savings might be on a wholly different structure
6 that exists for DWSD than the one that is currently in the
7 plan, and that, your Honor, is speculation, so we don't think
8 it is relevant, and we don't think it's appropriate to
9 produce these documents again in the middle of the process
10 for the reasons we stated on the record in May.

11 MR. LEMKE: Your Honor, I guess I'll address the
12 relevance issue first, and I suppose that is an issue that if
13 we were to have access to this information, you would
14 ultimately have to decide if it became a part of our expert's
15 considerations and how it affected the opinion as to whether
16 or not it is relevant and whether or not it should be
17 properly considered, but I can tell you that our consultant
18 is telling us that it will provide relevant information to
19 his opinion. It may not be the determining information, but
20 it will certainly be something that he, as an expert in this
21 area, feels like he can and should rely on and that somebody
22 in his position who's being asked to provide this sort of
23 expert testimony regarding the operations of the system and
24 the finances of the system would rely on.

25 Now, in terms of whether or not it's appropriate at

1 this time to provide it, it is helpful to have heard what
2 Ms. Lennox said. I was relying -- and I think we were
3 relying primarily on the statements back in May that all of
4 these bids would be in by the end of June and that the real
5 concern appeared to be to let some of this information out,
6 some of the responses out prior to all the bids coming in,
7 and we had assumed that, in fact, all the bids had been
8 received. They may not have been selected yet, but that, in
9 essence, the information that is going to be provided or that
10 was going to be provided by each of the responding parties
11 has been provided and that that would no longer at this point
12 then chill the process at all if we had access to it. We
13 certainly are more than willing to enter into a protective
14 order -- an appropriate protective order to make sure that
15 the information is used solely for the purpose of allowing
16 our expert to review it and see how it informs his opinion.
17 And to the extent any of that information then would have to
18 find its way into the report or find its way into the record,
19 the protective order would have to address that as well
20 perhaps requiring some of the report to be filed under seal
21 and perhaps some of the testimony to be somehow under seal,
22 but we are certainly willing to work with that to make sure
23 the city does not get prejudiced, but we do feel the need to
24 have access to this information, your Honor. Thank you.

25 THE COURT: All right. Excuse me. In resolving

1 this matter, as before, the Court concludes it's appropriate
2 to weigh and balance the need of the city to maintain strict
3 confidentiality of the information that's requested with the
4 needs of the creditors who request this. In weighing and
5 balancing those again here today, the Court does not come to
6 any different conclusion than it did the last time, and,
7 accordingly, the Court concludes that the record fails to
8 establish cause for reconsideration here. The Court accepts
9 and understands why the city believes that maintaining strict
10 confidentiality of this information is important to its
11 longer-term objective of restructuring the department to the
12 extent that it continues to have that objective. On the
13 other hand, the need of the creditors to have this
14 information doesn't appear to be that strong. It appears to
15 the Court that the creditors and their experts can do their
16 work without this information, so the request is denied, but
17 it is denied without prejudice because circumstances may
18 change and may warrant a different result at a later time.

19 Okay. Next I was hoping to have a conversation with
20 the people involved in the site visit. Is everyone here
21 who's involved in that? Is Mr. Hertzberg available?

22 MR. LEMKE: Your Honor, may I be excused? I am not
23 involved in this.

24 THE COURT: Yes, yes. Everyone who's not involved
25 in the site visit is excused, and, in fact, we're going to

1 close the courtroom if we're actually going to proceed with
2 this conference. Ms. Lennox, I know I didn't give notice of
3 this, and I'm sure that's why Mr. Hertzberg is not here.
4 Should we choose another date to do this?

5 MS. LENNOX: That might be wise, your Honor. We
6 had -- when we heard your Honor's agenda, we went out and
7 tried to contract Mr. Hertzberg, and we've e-mailed and
8 called, and we haven't gotten a response back yet, so --

9 THE COURT: Okay.

10 MS. LENNOX: -- we haven't heard. And Mr. Shumaker,
11 who's the other person who knows, has a deposition today.

12 THE COURT: Yeah. All right. Well, then I think it
13 would be appropriate to take this off of the agenda, and
14 we'll find another time for it hopefully in the next few
15 days, perhaps even by telephone.

16 MS. LENNOX: Thank you, your Honor.

17 THE COURT: All right. So that's all I had on my
18 agenda. I will think about whether it's appropriate to
19 schedule another status conference before trial commences,
20 but that may depend on what I decide to do with the trial
21 itself.

22 MS. LENNOX: Thank you, your Honor.

23 THE COURT: Does anyone else have anything they want
24 to bring up in the meantime? Okay. We're done.

25 THE CLERK: All rise. Court is adjourned.

1 (Proceedings concluded at 11:05 a.m.)

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WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript
from the sound recording of the proceedings in the above-
entitled matter.

/s/ Lois Garrett

July 23, 2014

Lois Garrett